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October 12, 2009

By Electronic Mail

Mrs. Susan Hudson, Clerk
Vermont Public Service Board
112 State Street, Drawer 20
Montpelier, VT 05620-2701

Re: Docket 7533

Dear Mrs. Hudson:

I am writing on behalf of the Biomass Energy Resource Center (BERC). BERC respectfully submits the following comments in response to the Public Service Board ("the Board") Staff's request for further input regarding issues raised during the workshop held in this docket on October 8, 2009. By way of background BERC is a national non-profit organization, located in Montpelier Vermont whose mission is to achieve a healthier environment, strengthen local economies, and increase energy security across the United States through the development of sustainable biomass energy systems at the community level. BERC is currently working with five communities in Vermont – Burlington, Brattleboro, Middlebury, Montpelier and Randolph in an effort to bring European-style district energy to Vermont.

BERC respectfully recommends that the Board revise provisions of the Vermont SPEED Standard Offer Purchase Power Agreement ("the Contract") that assign all right, title and interest in "any transferable commodity, in addition to Electricity, that is directly attributable to the generation of electricity from the plant" to the SPEED Facilitator. *See*, Contract §§ 1(o), 3. The Contract should instead provide for assignment of only tradable renewable energy credits (except those attributable to farm methane plants), and capacity rights.

The current contract language is ambiguous and overbroad. In the case of biomass generation facilities, it could be construed to encompass auxiliary heat that some developers intend to use as an input to a variety of innovative ancillary businesses. The BERC projects mentioned would be undevelopable if that were the interpretation – as

they would lose or be unable to obtain financing if plans for such ancillary use of heat do not stay with the facility owner under the standard offer contract.

The Vermont Energy Act of 2009 (“the Act”) authorizes assignment to the SPEED facilitator of only two “transferable commodities” associated with standard offer-contracted projects other than power: tradable renewable energy credits (except those attributable to farm methane plants), and capacity rights. 30 V.S.A. §§ 8005(b)(6), 8005(g)(3), 8005(g)(4). It also arguably authorizes the future assignment to the SPEED facilitator of other types of tradable credits that may be developed in the future. *See*, 30 V.S.A. § 8005(b)(3) (Board is required to “[m]aximize the benefit to ratepayers from the sale of renewable energy credits or other credits that may be developed in the future. . .”). This very specific language should not be construed to require or allow the assignment of *any transferable commodity* directly attributable to the generation of electricity. Such an interpretation would be unreasonable and the Board would exceed its statutory authority in imposing such a requirement.

As stated above, the current Contract should explicitly assign only tradable renewable energy credits (except those attributable to farm methane plants), and capacity rights to the SPEED facilitator. The value of any other currently tradable or future “ancillary attributes” as referenced in footnote 21 of the Board’s Order entered September 30, 2009, if substantial, should be addressed through the Board’s rate setting process under 30 V.S.A. § 8005(b)(2). Finally, the Board can and should address new tradable credits akin to RECs that may be developed in the future through specific future amendments to the Contract, not through the current catchall language.

If the Board chooses not to revise the current Contract, it should then construe “any transferable commodity, in addition to Electricity, that is directly attributable to the generation of electricity from the plant” to exclude heat generated by biomass facilities. In fact, these plants contemplated by the statute which are capable of achieving a minimum efficiency of 50% are “heat-led” – meaning their primary purpose is to generate heat, and the electricity generation is ancillary to that process, not the other way around. Another consideration for the Board is the fact that in most cases, a biomass electric plant operator would need to incur significant additional costs to build out the infrastructure necessary to distribute the heat to customers to obtain a monetary benefit from the ancillary heat. The costs of the distribution infrastructure have not been considered as part of the SPEED Standard Offer rate for biomass. PSB Order Docket No. 7523 at 35 (Sept. 15, 2009). Therefore, as a policy matter the revenues associated with ancillary heat should be excluded from consideration as “Other Products.”

BERC appreciates the opportunity to submit these comments. Please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Dunkiel', with a stylized, flowing script.

Brian Dunkiel
SHEMS DUNKIEL RAUBVOGEL & SAUNDERS PLLC

cc: Service List
Christopher Recchia, BERC, Executive Director